

COMMONLY USED TERMS

ADR Attempt: An ADR Attempt occurs when an ADR technique is offered and the parties and management voluntarily agree to its use. Simply informing the parties about the option of ADR does not count as an attempt. Use of multiple ADR techniques in a single proceeding (e.g., mediation and early neutral evaluation) is one ADR attempt.

Agency: Each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include -- (A) the Congress; (B) the courts of the United States; (C) the governments of the territories or possessions of the United States; (D) the government of the District of Columbia.

Alternative Dispute Resolution (ADR): The Administrative Dispute Resolution Act of 1996, Pub. L. No. 104-320, 110 Stat. 3870 (1996) defines ADR as any procedure that is used to resolve issues in controversy, including but not limited to facilitation, mediation, factfinding, minitrials, arbitration, and the use of ombuds, or any combination thereof. Sec. 4(b), 571(3). An ADR procedure is defined as one in which a neutral is appointed and specified parties participate. *Id.* 571(6). The Air Force ADR Program Office defines these terms as follows:

1. Facilitation: This is an unstructured and flexible process in which the parties are assisted by a third party neutral (not necessarily a certified mediator) in interest-based negotiations toward a resolution. The primary attribute of facilitation is that the neutral engages the parties in settlement negotiations, focusing on the use of interest-based negotiation techniques to resolve their dispute. Stated differently, the facilitator assists the parties in looking behind their legal positions to reveal their underlying needs, desires, and concerns in order to allow those considerations to be addressed in resolving an issue in controversy. The three essential elements of facilitation are:

- a) A third-party neutral offers to facilitate a resolution to the dispute and neither party objects;
- b) The neutral assists the parties in using interest-based negotiations to resolve their dispute; and
- c) An informal oral agreement that resolves the matter is often all that is necessary for a successful facilitation. Some disputes, however, such as EEO complaints, require a written settlement.

Notwithstanding its informal nature, for facilitation to qualify as an “ADR procedure,” the facilitator must be designated or selected as a “neutral,” and accept the obligations of serving as a neutral, including adherence to the standards of conduct for neutrals in AFI 51-1201, ¶ 23.

2. Fact-finding/Early Neutral Evaluation: This is a structured process in which the parties seek the assistance of a subject matter expert to review the dispute and to provide an assessment of the likely outcome of the dispute. The primary attribute of these procedures is that

the parties have selected an expert to provide them with a non-binding opinion regarding how an adjudicative body would likely resolve their dispute. The three essential elements of these procedures are:

- a) The parties agree to use a subject matter expert to review their dispute;
- b) The subject matter expert provides a written or oral report as to his/her findings, and the parties use this report to assist them in resolving their dispute; and
- c) A formal written settlement agreement is not necessary for a successful resolution when using these procedures, but the matter must be resolved to be considered successful.

3. Mediation: This is a structured process in which the parties seek the assistance of a certified mediator to help them in resolving their issue in controversy. The primary attribute of mediation is a structured process in which the mediator assists the parties in using interest-based negotiation techniques to resolve their dispute, and the parties contemplate having separate and confidential caucuses with the certified mediator. The essential elements of mediation are:

- a) The parties agree to use a certified mediator to resolve their dispute;
- b) Certified mediator assists the parties in using interest-based negotiation techniques to resolve their dispute, and the parties contemplate meeting with the mediator in separate confidential caucuses; and
- c) A formal written settlement agreement is required for Air Force mediations.

4. Mini-Trial: This process is not used to resolve civilian personnel disputes. Mini-trials are used extensively to resolve complex large-dollar acquisition contract disputes.

5. Ombuds: This process is similar to that of either conciliation or facilitation with one important difference: the third-party must be officially appointed ombudsperson in writing by the base, Field Operating Agency, or Direct Reporting Unit.

6. Other ADR: For example, if an organization employs Peer Review Panels in which a panel of several employees (or employees and managers) review facts, listen to arguments, and provide a non-binding decision on an issue in dispute, this process is considered other ADR. Alternatively, an organization may be employing a technique that is considered part of another agency's ADR program, such as the Federal Labor Relations Authority. In addition, a dispute may be resolved by the use of a Federal Court's ADR program. Some defining characteristics of "Other ADR" are as follows:

- a) The technique employed involves the assistance of at least one third party and does not fit any of the categories defined in 1-5 above;
- b) The technique employed is considered an ADR technique by the Equal Employment Opportunity Commission, Federal Labor Relations Authority, or the Merit System Protection Board; or

c) The technique employed is considered an ADR technique by a Federal Court.

Dispute: See *workplace dispute*.

Dispute resolution communication: Any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or nonparty participant. A written agreement to enter into a dispute resolution proceeding, or final written agreement or arbitration award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication.

Dispute resolution proceeding: Any process in which an alternative means of dispute resolution is used to resolve an issue in controversy in which a neutral is appointed and specified parties participate.

Ex parte communication: An oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding.

In confidence: Information provided -- (A) with the expressed intent of the source that it not be disclosed; or (B) under circumstances that would create the reasonable expectation on behalf of the source that the information will not be disclosed.

Issue in controversy: An issue which is material to a decision concerning an administrative program of an agency, and with which there is disagreement -- (A) between an agency and persons who would be substantially affected by the decision; or (B) between persons who would be substantially affected by the decision.

Neutral: An individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy.

Party: A person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes.

Qualified Mediator: An individual who has completed basic mediation training sanctioned by the Air Force ADR program or a contractor provided by SAF/GC.

Relief: The whole or a part of an agency -- (A) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy; (B) recognition of a claim, right, immunity, privilege, exemption, or exception; or (C) taking of other action on the application or petition of, and beneficial to, a person.

Workplace Dispute: A formal or informal claim or issue in controversy, arising out of an existing or prospective employment relationship between the Air Force and its civilian employees, applicants for employment, or military members, for which a remedial process is

authorized by law, regulation or policy. A workplace dispute may be written or oral, and includes EEO complaints (formal and informal), employee grievances under a negotiated and agency grievance procedure, MSPB appeals, ULPs, and other undefined disputes arising out of the Air Force employment relationship.